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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,685

12/06/2004

Adi Shfaram

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07/07/2008

NATH & ASSOCIATES
112 South West Street
Alexandria, VA 22314

EXAMINER

SWEET, THOMAS

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

07/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,685	Applicant(s) SHFARAM ET AL.	
	Examiner Thomas J. Sweet	Art Unit 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 4-7, 10 and 20-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8, 9 and 11-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/25/2005 and 05/17/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

Claims 4-7 and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention species and subspecies, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 04/17/2008.

Applicant's election without traverse of Group I species B subspecies X and Y in the reply filed on 04/17/2008 is acknowledged.

Claim Rejections - 35 USC § 112

Claim 11 contains the trademark/trade name Gortex. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe polyester and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 9 and 11-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Vijil-Rosales (US 4,372,293). Vijil-Rosales discloses a system for breast lifting (title), wherein one or more anchors are fixed to a posture tissue, above a desired nipple level (col 1, lines 41-47) , with one or more suspending members suspended from the one or more anchors (col 1, lines 65-67) and extending through the breast for cradling the breast from below (col 3, lines 57-61).

Regarding claims 2, 3, the mesh would flattened under the breast and be laterally compressed under the tension of suspending the breast.

Regarding claims 9 and 11, the suspension member and the cradling portion are made of inorganic material such as Dacron (i.e. polyester).

Regarding claims 13 and 14, the one or more anchors and the one or more suspension members are fully capable of being deployable in a non-operable procedure (minimally invasive) and are fully capable of being deployable through stab-incisions formed at a bottom surface of the breast (the minimally invasive processed from the bottom of the breast is intended use for with the device of Vijil-Rosales capable of the use).

Regarding claims 15 and 18, the device of Vijil-Rosales is fully capable of being adjustable and removable at any time (through surgery) and both ends of the suspension member are attached to a single anchor (the clavicle, or fully capable of being tied off).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vijil-Rosales in view of Bellity (FR 2746298 for the IDS). Vijil-Rosales discloses a system as discussed above. However, Vijil-Rosales remains silent as the anchoring structure, specifically hooks are not disclosed. Bellity discloses another system for lifting the breast including hooks (27) for the purpose of anchoring the system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the hook anchor of Bellity for the anchor of Vijil-Rosales on the system of Vijil-Rosales in order to anchor the system. Such a modification amounts to mere substitution of one functionally equivalent anchor for another within the art of breast lifts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Sweet whose telephone number is 571-272-4761. The examiner can normally be reached on 6:45am - 5:15pm, Tu-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas J Sweet/
Primary Examiner, Art Unit 3774